

WM. HAZZARD WIGG—CLAIM FOR SLAVES TAKEN BY
THE BRITISH IN THE REVOLUTIONARY WAR.

APRIL 20, 1860.—Ordered to be printed.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred joint resolution No. 4, in relation to the account of William Hazzard Wigg, have carefully considered the same, and report :

That the claimant alleges an error in the report of the House Committee on Revolutionary Pensions, No. 176, first session of the thirty-second Congress, on which was based an act for the relief of William Hazzard Wigg, approved March 3, 1853. The alleged error is in the amount of one item in an account stated in the printed report, as follows :

“Ninety-six negroes, at \$390 per capita, (the rate of assessment of act of legislature of South Carolina in payment of Sumpter’s brigade,) \$35,880.”

It is apparent that 390 multiplied by 96 gives a sum 1,560 greater than that stated in the report. Wigg, therefore, claims \$1,560 to be due him ; and, in apparent confirmation, we find that the Senate committee appears by its printed report to have allowed for the same number of negroes at \$300 per head, and to have carried out the result from such data correctly. On this statement of the case, a resolution was adopted by Congress, approved February 2, 1859, authorizing the Secretary of the Treasury to ascertain and pay the alleged clerical error ; but the Secretary declined to go back of the act of 1853 for any such purpose. This resolution passed the Senate unanimously, without reference, on a declaration that a clerical error existed. In the House the resolution was referred to the Committee of Claims, and on the averment of error and an examination of the printed reports alluded to, the committee reported favorably, and the resolution was concurred in.

On the same ground Wigg now asks for an absolute appropriation of \$1,560, without reference to the Treasury Department, declaring that “if any power is given to the Secretary to ‘reopen,’ ‘re-examine,’ and ‘readjust,’ there is no telling what new obstacle may be discovered by which to defeat the intention of Congress and the reparation of the injury to the claimant.”

The Senate and House reports on which the act of 1853 was founded are substantially one, with the exception of the item in

question ; and Wigg admits that *he* drew or copied the paper which was thus used in common by the committees of both houses. The reports, therefore, are not conclusive proof as to what the error was. It might have been an error in the number of the negroes, and that error may have been common to both copies of the report. Moreover, the House report states "a rate of assessment of act of legislature of South Carolina," on which the item depended. Your committee therefore determined to go to the original papers from which the reports of the thirty-second Congress were made, and in these they discovered a very satisfactory explanation.

Wigg stated the South Carolina "rate of assessment" in his brief and argument thus :

"Taking for the valuation of the negroes the authority of an act of the legislature of South Carolina, passed about the same period, for the payment of Sumpter's brigade, in which the value of prime negroes is placed at £80, and inferior negroes at £40, and the proportion of the one to the other at nine one-hundredths :

" 90 prime negroes, at \$400.....	\$36,000
" 6 inferior negroes, at \$200.....	1,200."

Accompanying the papers was also a full statement of the account, in Wigg's handwriting, in which the South Carolina rate was more correctly applied, the pound being reduced to \$4 88, and the allowance of nine per cent. for inferior negroes being stated. The items in question were thus stated :

" 88 prime negroes, worth \$390 per capita.....	\$34,320
" 8 inferior negroes, worth \$195 per capita.....	1,560."

These items added together make precisely the ninety-six negroes, worth \$35,880, as stated in the first item of the report of the House committee of the 32d Congress. We find, therefore, that Wigg committed an error when he drew or copied the report, by stating the value of the ninety-six negroes to be \$390 per head, whereas the fact was that eight of the ninety-six were to be charged at \$195 per head ; that this error entitles him to no "relief;" and that, in point of fact, he has already received the full price he charged, and all that was intended to be allowed by the act of 1853. Your committee are unanimously of opinion that joint resolution No. 4 ought *not* to pass.

After this conclusion had been reached by the committee, and Wigg had learned that the adverse opinion was based upon papers in the Treasury Department, he made specific charges against that department, as follows :

"1st. I deny that any calculations were ever made, in either of the committees of Congress, anterior to the passage of the act of 1853, having in view the assessment of the slaves lost at different valuations.

"2d. All such calculations now shown of that nature are the works of officials of the treasury, made subsequently to the passage of the act, and with a view of defeating this present resolution."

Another letter, of like import, was sent by Wigg, but subsequently he asked liberty to withdraw it.

When these charges had been made, the committee, through one of its members and clerk, made a careful inspection of the original papers in the Third Auditor's office, and found both the "brief" and the account hereinbefore quoted to be in Wigg's handwriting, and that the brief was signed by him. On learning this, and a copy of the account being shown to him, Wigg confessed that the papers were his own work, but protested "that he had forgotten all about those papers." He then asked the committee not to go back of the reports of the 32d Congress, and if they did go back to the original papers, not to report the case to the House.

The committee preferred not to concur in these requests, and ordered a full report of the facts in the case to be made to the House. The facts developed in the investigation are quite extraordinary, and in compliance with the order of the committee, further statements are placed in the appendix, and are made a part of this report.

APPENDIX.

Wigg's original claim was presented to both houses May 10, 1852. It was for losses sustained at the hands of the British, in 1780, by Major William Hazzard Wigg, the grandfather of the claimant. Major Wigg was a gallant officer. He was captured by the British, and selected as one of the forty patriots who were made hostages of war at the time of the execution of Colonel Isaac Hayne, May 12, 1780. While a hostage of war his plantations were destroyed by the enemy. The present claimant presented papers as proofs of the claim, and among them this

"Statement of loss.

" 88 prime negroes, worth \$390 per capita.....	\$34,320 00
" 8 inferior negroes, worth \$195 "	1,560 00
" 6 horses, worth \$100 "	600 00
" 15 head of cattle, worth \$13 "	195 00
" 50 head of sheep, worth \$3 "	150 00
" 30 hogs, worth \$5 "	150 00
" 1 four-oared canoe boat, worth \$100.....	100 00
" £25 carpenter's and cooper's tools.....	122 00
" Crop destroyed by removal of negroes at harvest season	4,000 00
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	41,197 00
" Seventy-one years' interest at six per cent.....	175,381 00
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" Total amount of loss.....	216,578 00
" Four hundred sections of public land asked in full of losses and services of Major Wigg during the war of the revolution, which, at 80 cents per acre, will be worth.....	204,800 00
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" Gain to government.....	11,778 00"
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The committee of the House recommended payment for all the losses as above stated, *except for crops destroyed by removal of negroes at harvest season*, to wit, \$37,197. In addition, interest was recommended, and a bill was reported accordingly. The committee of the Senate agreed to the same, except that the ninety-six negroes were valued at \$300, and reported a bill to that effect, giving interest from November 14, 1782.

In respect to the claim of \$4,000, for crops, *Wigg now admits that he gave it up*, by the advice of Senator Butler, on the ground that "it would prejudice the whole claim." He waived the proposition for land also. When the bill was considered in the Senate, (January 14, 1853,) Senator Bayard, of Delaware, objected to allowing interest. Senator Butler, of South Carolina, conceded that there was no ground for any part of this claim, unless the peculiar circumstances of the case exempted it from the general class of such claims. On that ground he supported the bill, but conceded that interest should be allowed only from the time the claim was presented. January 21, 1853, it was agreed to increase the principal to the amount named by the House committee, to wit: \$37,197, and to allow interest from 4th March, 1851. In support of the bill, Senator Butler said:

"The gentleman who is interested in this bill *has given up a great deal* that the committee of the Senate thought he was entitled to ask."

This evidently referred to the \$4,000 item for crops, and to the interest. We repeat, Wigg has *admitted* to one of the committee that the item for crops was given up.

Thus amended, the bill passed the Senate; and it was passed in concurrence by the House, on the previous question and without debate.—(See Congressional Globe, 1852-53.) The act is as follows:

"ACT FOR THE RELIEF OF WILLIAM HAZZARD WIGG.

"[No. 101.]—*An act authorizing the adjustment and payment of the claims of William Hazzard Wigg, deceased, for losses sustained by him during the war of the revolution.*

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, late of the State of South Carolina, for losses sustained by him, the said Wigg, while retained as a hostage by the British officers during the war of the revolution.*

"SEC. 2. *And be it further enacted, That the said accounting officers, in the adjustment of the said losses, shall, and they are hereby, directed to allow the said Wigg the sum of thirty-seven thousand one hundred and ninety-seven dollars, with legal interest from the fourth day of March, eighteen hundred and fifty-one, until the day of stating the account of said losses.*

"SEC. 3. *And be it further enacted, That the Secretary of the Treas-*

ury be, and he is hereby, authorized to pay to William Hazzard Wigg, the grandson of the said William Hazzard Wigg, deceased, the amount that shall be ascertained to be due on account of the losses, including the interest, out of any money in the treasury not otherwise appropriated.

“Approved March 3, 1853.”

On the presentation of this act at the Treasury Department, 9th March, 1853, the Third Auditor proceeded to “adjust and settle the claims” provided for in the first section. He allowed the principal fixed in section 2, to wit:..... \$37,197 00

And interest at 6 per cent. from 4th March, 1851, to 1st

March, 1853, as per second section..... 4,494 21

41,691 21

And in accordance with the appropriation contained in section 3, the foregoing sum was paid to the claimant.

Wigg had *given up*, according to his own admission, the claim for crops, because it would prejudice the whole claim; the Senate had, on full consideration, settled the interest and principal; and by the declaration of Senator Butler it is clear that *Wigg agreed to all this*. On these conditions, by “*giving up a great deal*,” he procured his act. That act covered every dollar of his original claim, except what he had “given up;” and the treasury paid him every dollar provided for in the act. It would seem that here should be an end to the claim; but Wigg himself was of a widely different opinion. From this moment he starts a variety of claims, *based upon the act thus obtained*.

The claimant at the Treasury Department.

On page 15 of a pamphlet purporting to relate to these claims, and a part of which was put into the case before the committee by Wigg, is this

NOTE.

“Upon payment of the sum provided for in the 2d section of the foregoing act, in March, 1853, the claimant receipted for “*part payment*,” and gave notice of his further demand for the value of the *crops* lost by his grandfather, the amount of which, being then uncertain, he would take steps to discover as soon as possible, desiring, in the meantime, that no action should be taken in the case. Pursuant to this notice he proceeded immediately to South Carolina, and finding the evidence anticipated, (chiefly in the comptroller general’s office of the State,) he returned to Washington in the following October, and upon presenting himself at the treasury, in place of the final adjustment agreeable to the law, which he asked, he was met with the following decision of the honorable Treasurer; whereupon he caused his petition to the Court of Claims, herewith printed, to be duly filed by his attorney.”

The decision of Secretary Guthrie, thus alluded to, is dated April 29, 1853; and it is "that Wigg's account has been adjusted, settled, and paid in strict accordance with my [the Secretary's] view of the act; the act has already fulfilled its object, and the Secretary of the Treasury and accounting officers have no power or authority to re-adjust and resettle the claim for losses." It seems, moreover, that "this was in accordance with the construction given to the act by Mr. Colcock, one of the South Carolina members, who, on hearing that an attempt was to be made by Wigg to get more, voluntarily wrote to the Secretary to say that this was not the intention of those by whose influence Congress had been induced to pass the law."—(See Doc. C, annexed.)

The claimant in the Court of Claims.

This decision of Secretary Guthrie comes to Wigg's knowledge in October, 1853, and we do not find him again until July 16, 1855, when he files a petition in the Court of Claims to this effect:

1. Averring that the officers of the treasury have refused to pay anything beyond the sum named in the 2d section of the act of March 3, 1853, and have declined to adjust and settle his claim "according to what your petitioner [Wigg] believes to be the true intent and meaning of said act."

2. Averring a clerical error of \$1,560 in the report of the House Committee on Revolutionary Pensions, No. 176, 1st session 32d Congress. [The claim disposed of in this report.]

3. Claiming "about six thousand dollars" for crops lost. [Originally this item was \$4,000, and it was "given up."]

4. Claiming interest on the whole amount lost, "from the time of the loss," and averring that the House so *passed* the bill and sent it to the Senate. [We do not find that the House bill ever passed; on the contrary, the Senate *refused* the interest, except from the date of the claim, March 4, 1851, and the House concurred in the Senate bill.]

This petition was argued and submitted to the court, on the question of law, December 20, 1855; and on the 4th of January, 1856, Judge Gilchrist delivered the opinion of the court. The court concurred in Wigg's construction of the act, and directed testimony to be taken, "to determine whether any further sum should be allowed to the claimant than that specified in the 2d section of the act."—(Document A, annexed.)

Wigg was thus put upon the proof of his claim by the court; and next we find him varying the claim itself by an amended petition, which was filed in court October 17, 1857.—(Document B, annexed.) *He dropped his claim for clerical error*; perhaps it could not be entertained under the act: more probably it could not have been proven, had the solicitor of the United States produced Wigg's original statement of the claim. But a still more remarkable variation was in the claim for *crops lost*. In the original statement of loss of crops, Wigg put the amount at \$4,000 in the whole; after he had returned "with the evidence anticipated," in October, 1853, (see "note" before quoted,) he set up the amount, in the first petition to the court,

at "about \$6,000" in the whole; but in the amended petition he says he believes he can establish the "fact, that in addition to the losses estimated in said report [House committee, 32d Congress,] and allowed in the act [of 1853,] his said grandfather lost his crops *for a series of years*, to the *annual average amount of about twenty-two thousand two hundred and fifty dollars.*" The case was partly argued on the facts March 18, 1858, as appears from a note from the assistant clerk of the court, who adds: "Since then the claimant's counsel have never resumed the case." It will be seen hereafter that he means that the argument was abandoned. Inasmuch as the grounds of Wigg's claim have been given in his amended petition, we add the brief of the solicitor of the United States.—(Document C, annexed.)

The claimant in Congress again.

Having abandoned his claim for clerical error in the Court of Claims by his amended petition of October 17, 1857, Wigg presented that claim to Congress June 10, 1858. Senator Hammond stated that a clerical error had occurred, and by unanimous consent, without reference or examination, a resolution for the relief of Wigg was passed by the Senate. After this resolution reached the House, December 7, 1858, Mr. Keitt stated that there had been a clerical error, he believed in the amount of interest, and asked the concurrence of the House in the Senate resolution; but on motion of Mr. Giddings, the resolution was referred to the Committee of Claims. January 4, 1859, the committee reported that in House report of Committee on Revolutionary Pensions, No. 176, (printed copy,) they had found a clerical error amounting to \$1,520; and on this report, January 31, 1859, the House concurred in the Senate resolution by a vote of 92 to 57. Unquestionably the gentlemen from South Carolina and the Committee of Claims acted upon an averment or assurance of error by Wigg, apparently sustained by the printed reports in the case. Wigg distinctly alleged error to the court; we presume he did to the gentlemen named. Had such an assurance been made to this committee it is quite probable the claim would not have been rejected, unless it had been upon grounds entirely different from those that have controlled this decision. Fortunately this committee had commenced the investigation and discovered the nakedness of the claim before Wigg appeared. Thus much in justice to those gentlemen who favored the resolution of 1859.

The resolution was approved February 2, 1859, and directed the Secretary of the Treasury "to examine and readjust the accounts of William Hazzard Wigg, stated under authority of the act of Congress for his relief," (1853,) "and ascertain the alleged clerical error," &c.—(Document D, annexed.)

Upon the presentation of this resolution, the Treasury Department again rejected Wigg. To use his own words: "The Secretary declined paying the above resolution, on the ground that it gave to him no authority to go back to the report of the committee to ascertain the existence of the alleged error, and in this opinion he was sustained by the Attorney General."

The claimant in the Court of Claims once more.

While Congress is acting on this claim for error, set up on the 10th of June, 1858, and provided for in the resolution of February 2, 1859, (passed January 31,) Wigg has an eye upon his claim for crops and interest, which was languishing in the Court of Claims. December 13, 1858, Wigg asked the court to *dismiss his case* for want of jurisdiction, but the court refused to do so.—(Document E, annexed.)

The claimant appeals to Congress against the court.

The court having refused the motion to dismiss the case, on the 4th of January, 1859, (the very day on which the House committee reported in favor of his resolution in respect to the clerical error,) Wigg sent a memorial to the Senate, asking an order for the withdrawal of his papers from the Court of Claims. It was referred, but not reported at that session. February 9, 1860, he procured from the Senate an order for the withdrawal of his claim for crops and interest from the court. February 13, 1860, he presented his order to the court and moved a dismissal of the case, and the claim for crops and interest is now pending in the Senate. February 16, 1860, he presented his claim for clerical error to the House and asked an absolute appropriation, without the power of scrutiny in the Treasury Department. The Committee of Claims of the House found no claim on the ground of error.

Such is the history of the case as developed in the committee ; and it is deemed worthy of record, as an example of the ingenuity with which questionable claims are sometimes pressed upon Congress, the Treasury Department, and the Court of Claims, and as a warning to all concerned.

A.

COURT OF CLAIMS.

WILLIAM H. WIGG *vs.* THE UNITED STATES.

[Petition filed July 16, 1855.]

Opinion of Chief Justice GILCHRIST :

The following opinion in the case of William H. Wigg *vs.* The United States was delivered by Chief Justice Gilchrist on Friday, January 4, 1856.

To the honorable Court of Claims of the United States, sitting in Washington, D. C.

Your petitioner, William Hazzard Wigg, of the State of South Carolina, respectfully represents, that by the act of March 3, 1853, being chapter 138 of the acts of the second session of the thirty-second Con-

gress, it was enacted "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, for losses sustained by him while retained as a hostage by the British officers during the war of the revolution." The second section of said act also directed the said officers to allow the sum of \$37,197, with legal interest from the 4th of March, 1851; and the third and last section thereof authorized the Secretary of the Treasury to pay to your petitioner, the grandson of said deceased, "the amount that should be ascertained to be due on account of said losses, including the interest."

Your petitioner further represents that in construing this act the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining "to adjust and settle" the said claims, or to ascertain "the amount due on account of said losses," according to what your petitioner believes to be the true intent and meaning of said act.

Your petitioner alleges that, in his belief, the sum allowed is wholly inadequate as an estimate of the losses of his said grandfather, without taking any account of the interest. By reference to the report made to the House of Representatives by the Committee on Revolutionary Pensions, (Rep. No. 176, 1st session 32d Congress,) it will be seen that the estimate made by that committee was the exact amount inserted in the bill reported by them, which afterwards became a law. But in the very first item of that estimate *there is a clerical error* of no less than \$1,560; the value of the ninety-six slaves, at \$390 each, being \$37,440 instead of \$35,880, the amount estimated.

Besides this evident error of calculation, your petitioner has since discovered testimony not discovered at the time of his application to Congress, by which he believes he can establish the fact that in addition to the losses estimated in said report and allowed in the act, his said grandfather also lost his crops, to the amount of about six thousand dollars. As this loss was produced by the same causes, and occurred at the same time, as that already paid for, and was, indeed, a part of it, your petitioner insists that it ought to have been allowed and paid by the accounting officers of the treasury.

Your petitioner further insists, that as the claim of his grandfather is based upon the established principles of the public law as laid down by all the great writers on that subject, he is entitled to interest from the time of the loss, as ably and justly argued by the aforesaid committee of the House of Representatives, in the report already referred to. The House of Representatives itself seemed to concur in this view of the law, inasmuch as it passed the bill of the committee, and sent it to the Senate without alteration.

The Committee on Revolutionary Claims in the Senate, by its report No. 398, 1st sess. 32d Congress, also adopted the same view on the subject of interest. And it is now respectfully submitted to the court that the law of the case is as it was stated by the respective committees of the two houses of Congress in their reports aforesaid, and ought to be so declared by this tribunal, in order to correct the erroneous decision made at the treasury, as already stated.

In consideration of the premises, your petitioner prays that an ac-

count of all the losses sustained by his grandfather, while a hostage as aforesaid, may be fairly taken and stated, and that the same, with all the interest properly and legally due thereon, may be allowed and reported to Congress for payment.

W. H. WIGG.

BROWN, STANTON, and WALKER, *Attorneys*.

The question presented by this petition is whether such a case is therein stated as would authorize the court to order the taking of testimony?

The answer to the question depends upon the construction to be given to the act of March 3, 1853, ch. 138, 2d session 32d Congress. This act consists of three sections. The first section provides "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, late of the State of South Carolina, for losses sustained by him, the said Wigg, while retained as a hostage by the British officers during the war of the revolution."

The second section enacts "that the said accounting officers, in the adjustment of said losses, shall, and they hereby are, directed to allow the said Wigg the sum of thirty-seven thousand one hundred and ninety-seven dollars, with legal interest from the 4th day of March, 1851, until the day of stating the account of said losses."

The third section enacts "that the Secretary of the Treasury be, and he is hereby, authorized to pay to William Hazzard Wigg, the grandson of the said William Hazzard Wigg, deceased, the amount that shall be ascertained to be due on account of said losses, including the interest, out of any money in the treasury not otherwise appropriated."

The construction given to the different sections of this act by the solicitor is, that the first section was intended merely to state the grounds on which the allowance was to be made, that the second section was meant to declare and limit the amount to be paid, and that the third section intended only to provide that the sum specified should be paid to the claimant, the grandson of the deceased Major Wigg. He contends that the whole duty of the Secretary was performed by paying to the claimant the sum of \$37,197, with the interest thereon.

The claimant alleges that "the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining to 'adjust and settle' the said claims, or to ascertain 'the amount due on account of said losses,' according to what the petitioner believes to be the true intent and meaning of said act."

It is unnecessary for us to determine or to investigate any other question than that which arises upon the face of the act itself. If the three sections of the act had had no other purpose than such as the solicitor contends is indicated by them, it would have been the easier and more obvious mode to provide by one section only that the sum of \$37,197 should be paid to William Hazzard Wigg for losses sustained by his grandfather, Major William Hazzard Wigg, while detained as a hostage during the war of the revolution. There is no mysterious art to be applied to the exposition of statutes. It is to be

presumed that the legislature intend that words used in a statute shall have their natural effect. Their meaning is to be ascertained by the language they have used, and it is not to be supposed that they have used words without intending to convey any idea. Their whole purpose, as expressed in the act, is to be carried into effect, if possible, and no clause is to be rejected, unless it is necessary in order to accomplish the object intended by the legislature.

Tried by these rules, the whole meaning of the act cannot be said to be confined to the second section, as it now stands, or as it would be if it were so expressed as to accomplish only the object supposed by the solicitor. His construction, acute and ingenious as it is, does not seem to us to be the more obvious one. When the first section expressly provides that the accounting officers of the treasury shall "adjust and settle" the claims of Major Wigg, we know of no rule of construction that would authorize us to say that these words had no meaning, and that Congress did not intend that the claims should be adjusted and settled by the accounting officers. If we can say that these words had no meaning, and that Congress did not intend to convey the idea which the words express, what express provision of any act of Congress may we not reject, and where could the line be drawn? The second section of the act provides that "the said accounting officers, in the adjustment of the said losses," shall allow the said Wigg the sum specified. It is not, therefore, a mere provision for the payment of this sum. It implies that the first section requires something to be done, because the sum of \$37,197 is to be allowed "in the adjustment of said losses," which by the first section were to be adjusted and settled. Further, unless this adjustment were to be made, there would be no means of determining the amount of the interest, for that is to be cast from the 4th day of March, 1851, "until the day of stating the account of said losses;" and this is an additional reason why the language of the first section should receive the construction we have intimated. This section intends that when the losses are adjusted, in the adjustment the sum of \$37,197 shall be allowed; but it does not exclude losses exceeding that sum, if such be satisfactorily proved.

As to the third section, in addition to pointing out the person who is to receive the money, it provides that the sum to be paid him shall be "the amount that shall be ascertained to be due on account of said losses." It is evident that Congress did not intend that merely the sum of \$37,197 should be paid him, because, if such had been their intention, it cannot be conceived that they would have avoided the obvious and simple mode of saying so in terms, and would have adopted other language. Instead of specifying the sum, it is provided that "the amount that shall be ascertained to be due" shall be paid him. We are not aware of any authority that would permit us to construe these words as synonymous with the sum of \$37,197, or to reject them as senseless and without meaning. We think that the act requires that the claims of Major Wigg should be adjusted and settled at the treasury; that, in the adjustment, the sum of \$37,197 should be allowed; that it is only in this mode that the interest can be computed; that, when the amount is ascertained to be due, it shall be paid to the

claimant; and that it is only upon this construction that the whole object of the act can be accomplished.

This case does not raise the question whether, when Congress has conferred upon an individual, or a board, or a department, the power to examine and decide a matter, and the matter has been decided, such decision is or is not final? Here the Treasury Department considered that they had no power to adjust and settle the claims, and declined to do so. If the department had acted on the matter, the question as to the conclusiveness of the decision might have been raised, but as no action was had, we do not intend to express any opinion on the question alluded to. It is alleged in the petition that, in construing this act, the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining to "adjust and settle" the said claims, or to "ascertain the amount due on account of said losses," according to what the petitioner believes to be the true intent and meaning of the act. As our conclusions are different from those arrived at by the officers of the treasury, and as we are of the opinion that the claims for losses should be adjusted and settled, we shall direct testimony to be taken, and, when that is submitted to us, we shall be able to determine whether any further sum should be allowed to the claimant than that specified in the second section of the act.

B.

To the honorable Court of Claims of the United States, sitting in Washington, D. C.

Your petitioner, William Hazzard Wigg, of the State of South Carolina, respectfully represents, that by the act of March 3, 1853, being chapter 138 of the acts of the second session of the 32d Congress, it was enacted "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, for losses sustained by him while retained as a hostage by the British officers during the war of the revolution." The 2d section of said act also directed the said officers to allow the then ascertained sum of \$37,197, with legal interest from the 4th of March, 1851; and the 3d and last section thereof authorized the Secretary of the Treasury to pay to your petitioner, the grandson of said deceased, "the amount that should be *ascertained* to be due on account of said losses, including the interest."

Your petitioner further represents, that, in construing this act, the officers of the treasury have refused to pay anything beyond the sum named in the 2d section of said act, (which was only the amount then *ascertained* to be due,) with the interest there allowed, declining "to adjust and settle" the said claims, or to ascertain "the amount due on account of said losses," according to what your petitioner believes to be the true intent and meaning of said act.

Your petitioner has also, since the passage of the law by Congress,

procured testimony that was not previously accessible, by which he believes he can establish the fact, that in addition to the losses estimated in said report, and allowed in the act, his said grandfather likewise lost his crops for a series of years, to the annual average amount of about twenty-two thousand two hundred and fifty dollars. As this loss was produced by the same causes as that already paid for, and was, indeed, a part of it, your petitioner insists that it ought to have been allowed and paid by the accounting officers of the treasury.

Your petitioner further insists, that as the claim of his grandfather is based upon the established principles of the public law as laid down by all the great writers on that subject, he is entitled to interest from the time of the loss, as ably and justly argued by the aforesaid committee of the Senate, in the report already referred to, and the Senate itself seemed to concur in this view of the law, inasmuch as it passed the bill of the committee and sent it to the House of Representatives without alteration.* By reference to the report made to the Senate by the Committee on Revolutionary Claims, (Senate No. 398, 1st sess. 32d Congress,) it will be seen that the estimate made by that committee was the exact amount inserted in the bill reported by them, that afterwards became a law, which is indicative of the sense of that body upon the general merit of the claim, and the Committee on Revolutionary Claims in the House of Representatives, by its report, (No. 176, 1st sess. 32d Congress,) also adopted the same view on the subject of interest. And it is now respectfully submitted to the court, that the law of the case is as it was stated by the respective committees of the two Houses of Congress in their reports aforesaid, and ought to be so declared by this tribunal, in order to correct the erroneous decision made at the treasury as already stated.

Your petitioner finally alleges that, in his belief, the sum allowed is wholly inadequate as compensation for the losses of his said grandfather, and in consideration of the premises your petitioner prays that an account of all the losses sustained by his grandfather, arising from his condition of hostageship as aforesaid, may be fairly taken and stated, and that the same, with all the interest properly and legally due thereon, may be allowed and reported to Congress for payment.

WILLIAM HAZZARD WIGG,

Of South Carolina.

Hon. REVERDY JOHNSON, *Attorney.*

C.

IN THE COURT OF CLAIMS.

ON THE PETITION OF WILLIAM HAZZARD WIGG.

Brief of the Solicitor of the United States.

This claim is founded on an alleged misinterpretation of the act of Congress of 3d March, 1853, (10 Stat., p. 768,) for the relief of the claimant, whereby the claimant was held to be entitled to only the sum of \$37,197, and interest from 4th March, 1851, till paid; whereas, it is contended he was entitled to recover not only that sum,

*An error.

but payment for any other *losses* he should show to have been incurred by his grandfather whilst a hostage. The Secretary of the Treasury, in a decision dated 29th April, 1853, construed the words of the act which imposed upon the accounting officers the duty of "adjusting" and "settling" the account, and paying the amount that shall be *ascertained* to be due to the claimant, to mean only that those officers should compute the interest on the sum mentioned in the second section of the act, and refused to consider any testimony for the ascertainment of any other losses than those considered by Congress itself; *and this was in accordance with the construction given to the act by Mr. Colcock, one of the South Carolina members, who, on hearing that an attempt was to be made by Wigg to get more, voluntarily wrote to the Secretary to say that this was not the intention of those by whose influence Congress had been induced to pass the law.* This court, however, on a hearing of this case, had, for the purpose of considering what construction should be given to this act, decided that the language of the act was such as to admit of a claim being preferred under it for other losses than those considered by the committee; and the petitioner, in an amended petition, alleges that "since the passage of the law by Congress he has procured testimony that was not previously accessible, by which he believes he can establish the fact that, in addition to the losses estimated in said report, and allowed in the act, his said grandfather likewise lost his crops for a series of years to the annual average of about \$22,250." He claims this and interest from the time of the loss.

No such evidence as the petitioner here alleges that he had procured is offered. Some depositions have been taken, but the witnesses depose to no material fact. They do not profess even to have heard of any other losses than those considered by the committees of both houses of Congress by which the act of 1853 was passed, and which were included in their estimate.

Nor is it pretended in the argument of the counsel that any "testimony that was not previously accessible to establish the fact that, in addition to the losses estimated in said report, and allowed in the act, his grandfather likewise lost his crops for a series of years," &c., has been procured; but, on the contrary, it is merely attempted to show that it is a necessary inference from the facts assumed to have been established before these committees, that Major Wigg must have lost his crops for a series of years. The reasoning is this: as it appears that Congress assumed that Major Wigg lost ninety-six negroes from his plantations, on Okatee river, in 1781, it follows that he lost the crops which these negroes would have made if he had not lost them; and the new testimony taken does not go to the fact that any such losses were actually incurred, but merely to estimate the probable value of the labor of *prime* negroes on the rice lands on the Okatee, in the last century. Some of the witnesses estimate the value of such services at \$250 a hand, but others again, as Mr. Barnwell, the best informed, estimates it at but \$40 per annum. Then it is argued from the fact that as of a certain lot of 614 confiscated negroes only 44 were not *prime*, a great part of the negroes of those days were *prime*, and this is accounted for by the existence of the slave trade in those old days.

The dealers would not import any but a *prime*, merchantable article, and, therefore, in a given number of slaves, there would be a much greater proportion than in our day of working people.

It is only in this way the claimant shows any additional losses. He does not state the extent of these additional losses in the petition. It is there only said that there was annual average loss of \$22,250 for a series of years, and I think it not unlikely that if the loss was \$22,250 in 1781 or in 1782, it was not less in any of the 79 subsequent years, nor do I see any reason why his heirs should be denied compensation for any of the recent years if the earlier years are to be paid for.

It is manifest at a glance, indeed, that this is but an effort to get the profits which would have been earned by the negroes in lieu of the interest on the value of the negroes during the years intervening between 1781 and 1851, which Congress expressly disallowed in the act of 1853, by restricting the payment of interest to the time subsequent to the 4th March, 1851.

A claim for interest is so plainly in violation of the intent of the law that the claimant himself, in a letter to Mr. Cruger, found among the papers, expressly disclaims making such a claim. Referring to Mr. Colcock's letter, he says it was approved by him, but that it was written under the idea that the law admitted of a claim for interest from 1781, which he had no idea of doing. But he does, in fact, not only claim interest, but interest at a most exorbitant rate. Interest is but compensation for the want of the use of the articles or the value of the articles lost. Against a wrongdoer a plaintiff is allowed to recover specific articles, when they may be reached, and compensation for the use of them. As, for example, when a negro is recovered by action of replevin, the value of his services may also be recovered. But where the value of an article only is claimed and recovered, it is treated as if a sale had been made and the value of the article only and interest thereon is adjudged. This is so in suits between private litigants, and it is so also with respect to claims against the government, when compensation is made for the loss of the use of a thing as well as of the thing itself. This is illustrated by the reclamations against Great Britain for negroes, where, by the decision of the Emperor of Russia, it was determined that Great Britain should pay not only the loss, but make compensation for the want of the use of it since. That compensation was to be made by the payment of interest. Certainly that would be the utmost that could be expected of the United States in any case; but in this case interest was distinctly refused by Congress except from the date when the claim was made. It was no fault of the government that the claim was not presented sooner, and it seems to me that no complaint can be made of the manner in which the claim was acted on by Congress under all the circumstances.

In short, the court construed the act of 1853 to admit of a claim for *other distinct and independent losses* besides those which were considered and compensated by that act. But the claim here presented does not fall within that category. It is merely a claim for losses which might have been but were not necessarily consequential upon that which has been compensated. The letter of the law admits only of those which

are proved to have been actually suffered whilst Major Wigg was detained as a hostage, and there is no proof that he lost crops, or that he had them to lose. Nor does it necessarily follow that he suffered such losses, if it be assumed, as proved in this case, that the negroes were taken by the British; because their places may have been supplied, or they might have been lost if the British had not taken them. The principle of compensation for lost profits or interest must therefore be resorted to, and the act by limiting the compensation on that account to the time since the 4th March, 1851, is decisive against any further allowance on that score.

M. BLAIR.

D.

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That the Secretary of the Treasury be, and is hereby, directed to examine and readjust the accounts of William Hazzard Wigg, stated under authority of the act of Congress for his relief, approved on the third of March, eighteen hundred and fifty-three, and ascertain the alleged clerical error, whereby the sum of fifteen hundred and sixty dollars is supposed to have been withheld; and to pay the same to him out of any money in the treasury not otherwise appropriated, according to the true intent and meaning of that act.

Approved February 2, 1859.

E.

IN THE COURT OF CLAIMS.

WILLIAM HAZZARD WIGG *vs.* THE UNITED STATES.

December 13, 1858.

SCARBURGH, J.

On the 4th day of January, A. D. 1856, an elaborate opinion on the petition in this case was delivered for the court by the late presiding judge, and an order was made directing testimony to be taken. On the 18th of March, 1858, this case came on to be heard upon its merits. The argument for the petitioner was opened by his counsel; the solicitor answered, but before the reply on the part of the petitioner was closed it was suspended, and has not since been renewed. A motion is now made by the petitioner that this court shall decide that his case is not within its jurisdiction, in order that he may take it to Congress.

The petitioner's case is based upon the act of Congress approved March 3, A. D. 1853, (10 Stat. at L., p. 768, ch. 138,) and this court is expressly required by law to "hear and determine all claims founded upon any law of Congress."—(10 Stat. at L., p. 612, ch. 122.)

The petitioner's motion is overruled.